

REMARKS/ARGUMENTS

The above Amendments and these Remarks are in reply to the Office Action mailed on March 1, 2004. A Petition to Revive Unintentionally Abandoned Application is also filed herewith. Claims 1-23 were pending and rejected. Claims 12-14 and 23 were canceled. Claim 24 was added. Claims 1-11, 15-22, and 24 are now pending.

I. Objections to Drawings

1. The drawings were objected to because the data paths 105 and 107 were not properly shown. This has been corrected.
2. The Examiner indicated that Figures 1 and 2 should be designated by a legend. A legend has been added for Figure 1. With regard to Figure 2, the elements of this figure (housing) store the claimed elements that appear in Figures 3 and 4. Thus, this figure should not be considered prior art.

II. Claim Rejections Under 35 U.S.C. §101

Claims 1-14, 22 and 23 were rejected under 35 U.S.C. §101 because the disclosed invention is inoperative and therefore lacks utility. Applicants respectfully traverse the rejection. The Examiner states in his rejection that instructions cannot be stored in the section of memory to be tested, thus rendering the claim inoperative. Applicants respectfully disagree. There are many scenarios whereby a memory can store instructions, but the system is unable to execute the stored instructions. The present invention can be used in a scenario where potentially healthy memory is provided with the test instructions and is periodically tested to determine whether the memory remains functional.

Alternately, it is noted in the specification that the data paths and access mechanisms used by the CPU for storage of data differ from those used for execution of program code. Thus, even in an already-faulty system, it is possible that instructions can be loaded to a memory location, but not executed.

In light of the above, Applicants submit that the rejected claims are operative and request that the Examiner withdraw his rejection.

III. Claim Rejections Under 35 U.S.C. §112

Claims 1-23 were rejected under 35 U.S.C. §112 as failing to comply with the enablement requirement. With regards to claims 1, 12, and 23 and their respective dependent claims, the Examiner contends that the specification lacks sufficient disclosure to enable to claims. The Examiner is directed towards the description of Figure 4, which discusses the claimed methods and apparatuses, particularly the descriptions of steps 414-420. With respect to claims 12-14 and 23, the Examiner contends that the claims do not contain means for execution of the claimed program code. In response, Applicants have cancelled claims 12-14, and 23.

IV. Claim Rejections Under 35 U.S.C. §102

Claims 1-6 and 12-23 were rejected under 35 U.S.C. §102(e) as being anticipated by Cepulis, et al. (U.S. Patent No. 6,463,550), Issued October 8, 2002 and filed March 12, 1999 (hereinafter Cepulis). Applicants respectfully traverse the rejection. Claim 1 recites:

loading a test program code into an area of the system memory to be tested, the test program code having a plurality of instructions configured to detect one or more defects in the system memory;

fetching an instruction of the test program code from the system memory;

executing the fetched instruction with a CPU; and

determining whether the executed instruction yields a test result in conformance with an expected result.

The claimed method loads a set of instructions into a system of memory to be tested and tests the memory by attempting to execute the loaded instructions. The other independent claims recite similar functionality. This system is advantageous as the mechanisms through which instructions are executed differ from those used for data access. By attempting to execute the instructions from the tested memory, the claimed invention verifies that instructions can be executed from the memory to be tested. Additionally, this testing can be performed on an ongoing basis.

Cepulis, which loads BIOS instructions into a specific section of memory that is separately dedicated for holding testing instructions, does not disclose or suggest the claimed invention. Rather, Cepulis discloses a dedicated memory, which is outside the memory to be tested that stores testing instructions, that when executed, store data in the memory to be tested. Thus, the system of Cepulis cannot detect whether instructions can be executed from a section of memory to tested. Additionally, the system of Cepulis is designed to test memory that has already failed, rather than periodically verifying the health of memory.

Claim 24 further adds that the testing is performed on an ongoing basis, and makes explicit that the system verifies whether instructions can be executed from the section of memory to be tested.

In light of this, Applicants submit that the rejected claims are novel and request that the Examiner withdraw his rejection.

V. Claim Rejections Under 35 U.S.C. §103

Claims 7-11 were rejected under 35 U.S.C. §103(a) as being unpatentable over Cepulis. The Examiner, while conceding that Cepulis does not disclose or suggest the claimed invention, nonetheless insists that it would be obvious to one of ordinary skill of the art. Applicants submit that the Examiner has not met the prima facie case for obviousness that requires that “the prior art references (or references, when combined *must teach or suggest all of the claim limitations*”. MPEP 706.02(j) (emphasis added). The Examiner, insists that one of ordinary skill in the art could have developed the additional limitations, but provides no support whatsoever for this assertion either in the form of Official Notice or in the text of the art that was available at the time of filing.


Applicants submit that the claimed limitations must be found in the references themselves. “All words in a claim must be considered in judging the patentability of the claim against the prior art.” *In re Wilson*, 424 F.2d. 1382, 1385. In light of the deficiencies of the cited reference, Applicants submit that the present invention is not obvious to one of ordinary skill in the art and request that the Examiner withdraw his rejection.

VI. Conclusion

In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: November 19, 2006 By: 
Bryon T. Wasserman
Reg. No. 48,404

FLIESLER MEYER LLP
Four Embarcadero Center, Fourth Floor
San Francisco, California 94111-4156
Telephone: (415) 362-3800
Fax: (415) 362-2928
Customer No.: 223910

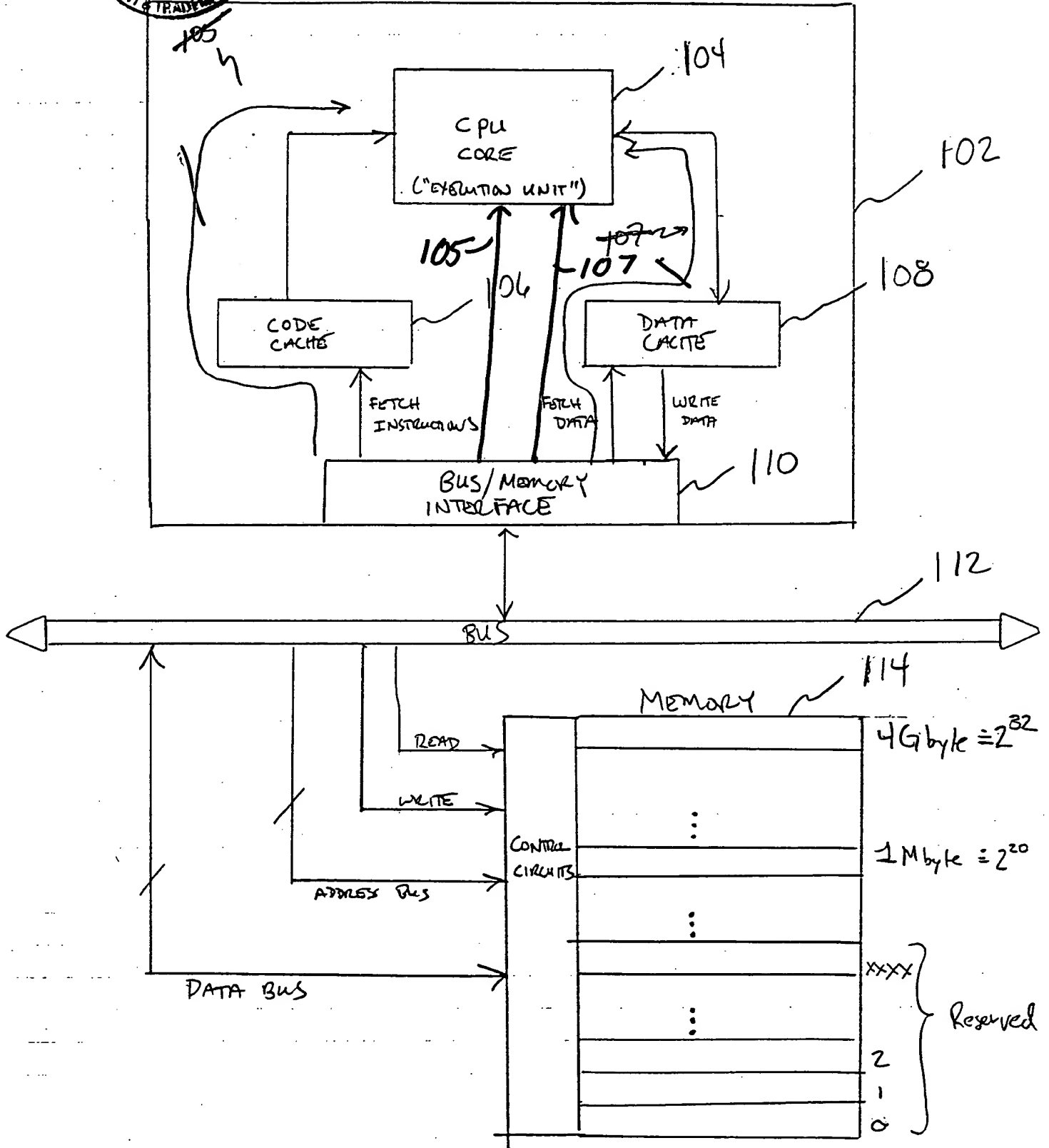


FIGURE 1 (Prior Art)